

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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**In re:** : **Chapter 11 Case No.**  
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**WORLDCOM, INC., et al.,** : **02-13533 (AJG)**  
:  
**Debtors** : **(Jointly Administered)**  
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**ORDER ON MOTION OF REORGANIZED DEBTORS FOR AN ORDER  
ENFORCING THE PLAN AND THE CONFIRMATION ORDER TO BAR  
PROSECUTION OF AN ACTION TO COLLECT ON DISCHARGED CLAIMS  
INITIATED BY CARL BRUNSON AND NINA BRUNSON**

Upon consideration of the Motion of Reorganized Debtors for an Order Enforcing the Plan and the Confirmation Order to Bar Prosecution of an Action to Collect on Discharged Claim Initiated by Carl Brunson and Nina Brunson (the “Discharge Motion”) and the parties’ briefs and arguments on the Discharge Motion, and for the reasons stated in the Court’s March 14, 2006 decision on the Discharge Motion, which is attached hereto as Exhibit A, it is hereby

ORDERED that the Discharge Motion is granted, except to the extent that it seeks costs and attorneys’ fees which are denied; and it is further

ORDERED that the claims asserted against MCI, including it’s predecessors, subsidiaries and affiliates (collectively, the “Debtors”), by Carl and Nina Brunson (the “Brunsons”) were discharged upon confirmation of the Debtors’ plan of reorganization; and it is further

ORDERED that the Brunsons are barred from taking further action to prosecute their lawsuits to recover on such claims and are directed to cease any further acts to attempt to enforce their claims against the Debtors and to dismiss with prejudice

all claims and/or causes of action as against the Debtors to the extent they remain pending; and it is further

ORDERED that this Order does not bar the Brunsons from proceeding against non-Debtor parties in their civil action now pending in Jasper County, Illinois.

Dated: New York, New York  
March 28, 2006

s/Arthur J. Gonzalez  
HONORABLE ARTHUR J. GONZALEZ,  
UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

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9 Before the Court is a Motion by the  
10 Reorganized Debtor MCI WorldCom Network  
11 Services, Inc. ("Debtor"), for an Order  
12 Enforcing the Plan and the Confirmation Order  
13 ("Motion"). The Debtor seeks to bar the  
14 action brought by Carl and Nina Brunson (the  
15 "Brunsons") for injunctive relief in the  
16 Circuit Court of the Fourth Judicial Circuit,  
17 Jasper County, Illinois (the "Brunson  
18 Action"). The Brunsons seek a permanent  
19 injunction compelling the Debtor to remove  
20 its fiber optic cable from the easement the  
21 Debtor holds across the Brunsons' property.  
22 The Debtor argues that this claim for  
23 injunctive relief arose prepetition and was  
24 subsequently discharged on the effective date  
25 of its reorganization plan ("Effective

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2 Date"). The Debtor also seeks recovery of  
3 the legal costs it incurred responding to the  
4 Brunson Action on the grounds that the  
5 Brunsons knowingly violated this Court's  
6 Order Confirming the Modified Second Amended  
7 Joint Plan of Reorganization ("Confirmation  
8 Order"). The Brunsons respond that the  
9 asserted claim for injunctive relief is not a  
10 "claim" as defined by the Bankruptcy Code and  
11 thus was not discharged by the Confirmation  
12 Order. The Brunsons also argue, in the  
13 alternative, that even if this Court finds  
14 the claim for injunctive relief to be a  
15 dischargeable claim, the asserted claim  
16 nonetheless arose postpetition and therefore  
17 was not discharged.

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2 Supreme Court has recognized, there may be  
3 situations in which a claim for injunctive  
4 relief is not a claim within the language of  
5 section 101(5)(B) and thus is not discharged.  
6 *Ohio v. Kovacs*, 469 U.S. 274, 284-285 (1985).

7                   Whether or not a particular remedy  
8   or relief sought against a debtor who has  
9   filed under the Bankruptcy Code is a "claim"  
10   involves interpretation of the Bankruptcy  
11   Code and is thus an issue of federal law.  
12   This Court notes that while Kovacs  
13   highlighted this issue, it did not set forth  
14   a standard for determining when a claim for  
15   injunctive relief is not a dischargeable  
16   claim. The controlling standard for this  
17   Court was provided by the Second Circuit in  
18   In re Chateaugay, 944 F.2d 997 (2d Cir.  
19   1991) ("Chateaugay I"). In a thorough and  
20   detailed analysis of the issue, the Court  
21   held that "[a]n injunction that does no more  
22   than impose an obligation entirely as an  
23   alternative to a payment right is  
24   dischargeable." Id. at 1008. Only where the  
25   injunction is the only available relief, that

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2 is, where the enjoining party has no  
3 authority to require damages or compensation  
4 in lieu of injunctive relief, is injunctive  
5 relief not a dischargeable claim. Id.

6                         Here, the Brunsons have an  
7 available alternative payment right, and  
8 thus, the claim for injunctive relief is a  
9 "claim" under the Bankruptcy Code. The  
10 Brunsons argue that the asserted claim for  
11 injunctive relief is limited to any  
12 prospective injury and therefore, that they  
13 have no "right to payment." However, while  
14 it may be the case in some instances that  
15 future injury may only be adequately remedied  
16 through injunctive relief, this is not true  
17 here. As a "telecommunications carrier," the  
18 Debtor possesses the right of eminent domain  
19 under the Illinois Public Utilities Act. See  
20 35 Ill. Comp. Stat. Ann. 635/10 (West 2005)  
21 (defining "telecommunications carrier"); 220  
22 Ill. Comp. Stat. Ann. 65/4 (West  
23 2005)(granting telecommunications carriers  
24 the right of eminent domain as defined in 220  
25 Ill. Comp. Stat. Ann. 55/2 (West 2005)). As

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2 act 55, section 2 states, a  
3 telecommunications carrier "may enter upon  
4 any lands . . . and take and damage private  
5 property for the erection and maintenance" of  
6 its telecommunications system. While this  
7 statute does not provide the Brunsons with a  
8 direct payment right, it does provide an  
9 alternative remedy for monetary damages  
0 insofar as the Brunsons could seek an  
1 injunction forcing the Debtor to exercise its  
2 powers of eminent domain under the statute.  
3 Moreover, because the Debtor would exercise  
4 its power of eminent domain if this Court  
5 granted the Brunsons injunctive relief, such  
6 injunctive relief is the means through which  
7 to compel payment of monetary damages.  
8 Therefore, the Brunsons have the "option to  
9 accept payment in lieu of continued [injury]"  
0 as a result of the Illinois Public Utilities  
1 Act. Chateaugay I, 944 F.2d at 1008.

22                           This Court's reasoning is analogous  
23       to the Supreme Court's holding in Johnson v.  
24       Home State Bank, 501 U.S. 78 (1991), where  
25       the Court held that the right to foreclose on

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a mortgage was a claim under the Bankruptcy Code. The Supreme Court reasoned that although the creditor possessed only the equitable right of foreclosure and not an alternative right to payment, the right to foreclose gave rise to a corollary right to payment, either through sale of the property or by compelling the debtor to satisfy the debt in order to stop the foreclosure. *Id.* at 83-85. Here, the Brunsons' right to equitable relief similarly gives rise to a corollary right to payment through the operation of the Illinois Public Utilities Act. Similarly, the Seventh Circuit held in *Udell v. Standard Carpetland, USA Inc.,* (*In re Udell*) 18 F.3d 403, 408 (7th Cir. 1994) that "a right to an equitable remedy is a 'claim' if the same breach also gives rise to a payment 'with respect to' the equitable remedy." The Court finds that the asserted right to injunctive relief and the right to payment vis-a-vis the Public Utilities Act are sufficiently related to justify the Court's conclusion that the Brunsons' claim

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2 for injunctive relief is a "claim" under  
3 section 101(5)(B).

4                         This conclusion is supported by  
5 consideration of the purposes of the  
6 Bankruptcy Code. The Brunsons are here  
7 seeking to evade the operation of the Code by  
8 limiting their demand for injunctive relief  
9 to prospective injury, cognizant of the fact  
10 that any claim for damages based on the  
11 Debtor's pre- and postpetition actions was  
12 discharged on the Effective Date. In  
13 essence, the demand for injunctive relief  
14 here is an alternative route through which to  
15 obtain the damages that were discharged by  
16 the Code, as the Brunsons can use the threat  
17 of an injunction to extract a settlement from  
18 the Debtor. The Brunsons had the opportunity  
19 preconfirmation to either obtain an  
20 injunction or file a proof of claim for  
21 damages, but failed to do so. They cannot  
22 therefore use the threat of an injunction to  
23 recoup a discharged debt now. To allow the  
24 Brunsons to do so would plainly frustrate the  
25 purposes of the Bankruptcy Code.

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That the Brunsons' claim for injunctive relief is a claim under the Bankruptcy Code does not end the inquiry, however. As only prepetition claims are discharged on the Effective Date, the Court must now determine whether the asserted claim is a prepetition claim. See 11 U.S.C. Section 1141(d)(1)(A). The Second Circuit in LTV Steel Co., Inc. v. Shalala (In re Chateaugay Corp.) ("Chateaugay II") set forth fairly exhaustively the standard for determining whether a claim is prepetition or postpetition. 53 F.3d 478, 496-498 (2d Cir. 1995). As an initial matter, the court noted that "Congress intend[ed] to invest the term 'claim' with the 'broadest possible' scope so that 'all legal obligations of the debtor [would] be able to be dealt with in a bankruptcy case." Id. at 496 (citing Pennsylvania Dep't of Pub. Welfare v. Davenport, 495 U.S. 552, 558 (1990)). With this in mind, the court held that a prepetition claim is one where "the relationship between the debtor and the



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2 discharge of their claim by simply stating  
3 that they seek relief only for the Debtor's  
4 activities in the postpetition period. They  
5 may so limit their claims as to the relevant  
6 injury for which they seek relief, but this  
7 limitation has no effect on the prepetition  
8 character of the claims for the purposes of  
9 the Bankruptcy Code. Therefore, the Court  
10 concludes that the asserted claim for  
11 injunctive relief is a prepetition claim and  
12 was thus discharged on the Effective Date.

13                                  The Debtor argues that it should be  
14 awarded compensation for the legal costs  
15 incurred responding to the Brunson Action in  
16 this Court on the theory that the Brunsons  
17 knowingly violated the Confirmation Order.  
18 As the Brunsons raised before this Court an  
19 issue as to the dischargeability of their  
20 claim for injunctive relief, this Court does  
21 not believe that the imposition of sanctions  
22 pursuant to Fed.R.Bankr.P. 9011 is proper.

23                           In light of the foregoing, this  
24       Court grants the Debtor's Motion for an Order  
25       Enforcing the Plan and Confirmation Order,

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2 except insofar as this Court denies the  
3 Debtor's request for legal costs.

4 The Debtor is to settle an order  
5 consistent with this Court's opinion,  
6 attaching thereto as Exhibit A a revised and  
7 modified transcript of the opinion as read by  
8 the Court today. Thank you.

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